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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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MAY 9 1997

Federal Communications Commission  
Office of Secretary

In the Matter of	)	
	)	
Revision of Part 22 and Part 90	)	WT Docket No. 96-18
of the Commission's Rules to Facili-	)	
tate Future Development of Paging	)	
Systems	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act --	)	
Competitive Bidding	)	

To: THE COMMISSION

COMMENTS OF AMERICAN PAGING, INC.

American Paging, Inc., on behalf of itself and subsidiaries (collectively "API"), by its attorneys, hereby comments on specific Petitions for Reconsideration, pursuant to Section 1.429 of the Commission's rules, filed with respect to the Commission's final action adopted in its Second Report and Order and Further Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

Our comments address aspects of the Petitions for Reconsideration filed by Arch Communications Group, Inc. ("Arch"), Paging Network, Inc. ("Pagenet"), Personal Communications Industry Association ("PCIA") and Pronet, Inc. ("Pronet") relating to co-channel protection under Section 22.503(i) of the Commission's rules and the use of fixed distance tables under

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<sup>1</sup> Specific reference is made to Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (FCC 97-59), FCC Rcd. \_\_\_\_ (1997) ("Second Report and Order") and the Commission's Notice of Proposed Rulemaking, 11 FCC Rcd. 3108 (1996) ("Notice of Proposed Rulemaking") in the above captioned proceedings.

Section 22.537 of the Commission's rules.

The Commission should not change the current co-channel protections to be afforded incumbent non-geographic licensees under Section 22.503(i) of the Commission's rules. These protections, as adopted, are an appropriate balancing of the rights of incumbents and geographic licensees. The petitions of Arch, Pagenet, Pronet and PCIA should be denied on this point.

On the need for additional flexibility to be accorded incumbent non-geographic licensees to modify and maintain existing systems, we agree and support the positions of Arch and Pronet. The Commission should amend its rules to ensure that service to the public over existing systems is not unduly inhibited by rigid adherence to the fixed mileage standards in Section 22.537 of the Commission's rules.

#### Discussion

1. The Commission Should Retain the Co-channel Protection Rights to be Afforded to Incumbent Non-Geographic Licensees.

Arch, Pagenet, PCIA and Pronet have requested changes in the scope of co-channel protection obligations owed to incumbent PCP licensees by geographic area licensees under Section 22.503(i) of the Commission's rules. These requests should be denied.

The Commission's adoption of full protection rights for incumbents was not inadvertent, unintentional or unexpected as claimed by Pagenet (Petition, p. 17), PCIA (Petition, p. 16) and Pronet (Petition, p. 23). The Commission clearly stated in its Notice of Proposed Rulemaking:

"In the event that we adopt our proposals for geographic area licensing, all existing PCP facilities would receive full protection as incumbents."<sup>2</sup>

Licensees with pending requests for nationwide licensing, as well as all other 929-930 MHz licensees, were on notice that full co-channel protection rights would be afforded to non-geographic licensees. Pagenet made extensive arguments in its March 18, 1996 Comments (pp. 9-11) for the same diminished co-channel protections for incumbent 929 MHz licensees, which it now requests be adopted in its Petition for Reconsideration. These arguments were considered by the Commission in the adoption of Section 22.503(i). There is no need for the Commission to revisit them on reconsideration.

The adoption of Section 22.503(i) implements protections which the Commission assured PCP incumbents they would have at the conclusion of the transition to market area licensing. Section 22.503(i) is a clear, administratively workable and competitively fair standard for co-channel protection which balances the interests of incumbents and geographic licensees, large and small. It is part of a package of rule changes in which geographic licensees on 929 MHz channels obtained new explicit "reversion" rights<sup>3</sup> and other benefits of regulatory streamlining which will enhance the value of the licenses they hold. There is ample support in the record and under the Commission's statutory mandate for the adoption of Section 22.503(i) as an integral part of this package.

Also, it would be grossly unfair and highly disruptive to the orderly planning for system development during the pendency of these proceedings to diminish the full co-channel protection of incumbent licensees implemented in Section 22.530(i). The Commission suspended all action on pending exclusivity requests under its former rules more than a year ago and informed PCP

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<sup>3</sup>

See Section 22.503(f) of the Commission's rules.

licensees concurrently that they would receive full co-channel protection rights if their pending exclusivity requests were to become moot. Licensees have pursued application filing and build-out strategies in reliance on the foregoing Commission assurances and its interim processing rules during the long awaited transition to market area licensing. Pending exclusivity requests which are now stale, rendered moot and being dismissed should have no relevance here.

Finally, implementation of the co-channel protection obligations under Section 22.503(i) is fully consistent with continued operations under existing channel sharing arrangements involving "grandfathered"<sup>4</sup> systems. Contrary to the arguments of Pagenet (Petition, p. 19), Section 22.503(i) does not require the termination of existing channel sharing arrangements involving grandfathered licensees. All incumbents sharing a channel in a given area receive co-channel protection under this section. They share such co-channel protection rights subject to whatever private arrangements they have among themselves. Section 22.503(i) does not compel the abrogation of such arrangements. The fact that one of these incumbents might also become a geographic licensee for that same area does not terminate the channel protection rights of any licensee who had previously qualified as an incumbent on that shared channel.

2. The Commission Should Adopt Flexible Rules for Modification and Maintenance of Systems for Incumbent Non-Geographic Licensees.

We support proposals of Arch (Petition, pp. 2-5) and Pronet (Petition, pp. 9-19) which would give incumbent non-geographic licensees flexibility to modify and maintain their systems so that service to the public is not disrupted.

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<sup>4</sup> Such "grandfathered" systems include incumbent 929-930 MHz licensees whose authorizations were granted on or before October 14, 1993 and all 929-930 MHz applicants whose applications were filed on or before October 14, 1993.

Rigid adherence to fixed distance tables in Section 22.537 of the Commission's rules will prevent incumbent licensees from being able to serve their protected areas. For example, loss of the use of a transmitter site for a base station which provides coverage at the outer perimeter of a composite interference contour, for whatever reason, is one such circumstance.<sup>5</sup> Modified formulas for determining interference contours, as proposed by Arch, would help to solve this problem but are not a complete answer. The Commission's rules should also permit reasonable modifications resulting from loss of a transmitter site which may result in minor changes in the area considered to be the incumbent licensee's protected area.<sup>6</sup> This is a simple, fair and non-disruptive way of balancing the competing interests of incumbents and geographic licensees.

Incumbent licensees also need flexibility to add or to modify fill-in transmitters on the basis of modified formulas so that internal system modifications which do not expand the outer perimeter composite interference contour are not precluded under Section 22.537. We agree with Pronet<sup>7</sup> that the Commission's rules should differentiate in this regard between licensed transmitters which form an incumbent's composite interference contour and its fill-in transmitters.

Pronet also makes a strong case for regulatory flexibility for incumbents to make minor modifications to extend existing interference contours to encompass "...creases or 'doughnuts' formed by composite contours, and small gaps in system coverage along coastlines." (Petition,

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<sup>5</sup> Arch Petition, p. 4.

<sup>6</sup> This flexibility will be essential in any situation where an incumbent operates a single base station such as a "grandfathered" system or as an isolated part of a multi-station system providing wide area coverage.

<sup>7</sup> Pronet Petition, p. 10.

p. 18). These areas would be too small to be served by the geographic licensee without causing harmful interference to the incumbent licensee's system. Adoption of opportunities for incumbents to serve such areas as extensions of existing systems will make available paging coverage and capacity which would otherwise be precluded.

#### Conclusion

We support the Commission's efforts to protect the interests of incumbent licensees who have existing systems and numerous subscribers who rely upon those systems to meet their paging needs. The co-channel protection rights of incumbents under Section 22.503(i) of the Commission's rules and additional flexibility for incumbents to modify and maintain existing systems supported here will help preserve established paging services. The public interest in continuity of service, in recognizing the commitments of incumbent licensees to their subscribers and in the preservation of a fair balancing of competitive opportunities is ample justification for the co-channel protections under Section 22.503(i) and the additional flexibility which we support.

Respectfully submitted,

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May 9, 1997

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